JIM F. RUSHER

IBLA 96-232 Decided November 19, 1997

Appeal from a Decision of the Arizona State Office, Bureau of Land Management, declaring a mining claim void for failure to pay a claim maintenance fee. AMC 100122.

Affirmed.

1. Mining Claims: Rental or Claim Maintenance Fees: Generally--Regulations: Validity

   Payment of rental fees imposed by the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 covering the 1993 and 1994 assessment years did not excuse failure to pay a claim maintenance fee required to be paid by 30 U.S.C. § 28f (1994) for the 1995 assessment year.

APPEARANCES: W. Scott Donaldson, Esq., Phoenix, Arizona, for Appellant; Richard R. Greenfield, Esq., Office of the Field Solicitor, Phoenix, Arizona, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Jim F. Rusher has appealed from a February 8, 1996, Decision of the Arizona State Office, Bureau of Land Management (BLM), that declared the Silver King lode mining claim (AMC 100122) void under provisions of the Omnibus Budget Reconciliation Act of August 10, 1993 (hereinafter referred to as the 1993 Act), 30 U.S.C. §§ 28i through 28k (1994) and 43 C.F.R. § 3833.1-5, for failure to pay a required $100 claim maintenance fee for the 1995 assessment year not later than August 31, 1994, or timely file a certificate of exemption from payment of such fee. In an earlier decision issued on June 7, 1995, BLM notified Rusher that there was no record that he had paid the 1995 fee and requested that he state whether payment had been made on or before the August 31, 1994, deadline for such fees, failing which his claim would be declared void. Rusher responded with several protests against BLM's finding that he had not paid the required fee, which were denied by the Decision here under review.

On appeal to this Board, Rusher admits he neither paid the maintenance fee that was due on August 31, 1994, nor sought waiver thereof; instead, his statement of reasons (SOR) attacks BLM's Decision as without legal foundation, arguing that BLM is estopped from finding his claim invalid because statements made by BLM employees to Rusher's agent prevented such payment from being timely made. Rusher also contends that the 1993 Act is "void for vagueness" and that regulations implementing the 1993 Act are ineffective because they were improperly promulgated and may not, as a consequence, be applied to his detriment. Alleging that both the 1993 Act and rules implementing it are invalid, he argues that the Decision under review cannot be affirmed.

[1] A provision of the 1993 Act, 30 U.S.C. § 28f (1994), requires payment of a claim maintenance fee not later than August 31, 1994, by all holders of unpatented mining claims following enactment of the statute. Departmental regulations implementing the 1993 Act provide that, prior to August 31, 1994, a $100 maintenance fee shall be paid "for the subsequent assessment year" beginning at noon on September 1. 43 C.F.R. § 3833.1-5(b) (1994). This fee may be waived for qualifying small miners. 43 C.F.R. § 3833.1-5(d) (1994). To qualify for waiver of the assessment year fee as a small miner, an exemption certificate establishing entitlement to the waiver must be filed "on or before August 31." See 43 C.F.R. §§ 3833.1-7(d) and 3833.1-6 (1994). In the absence of a timely request for waiver of the 1995 maintenance fee, BLM correctly found that the claim was forfeited when payment was not timely made. 30 U.S.C. § 28i (1994). The 1993 Act provides that failure to pay the required maintenance fee "conclusively constitutes a forfeiture" and an affected claim is then "deemed null and void by operation of law." 30 U.S.C. § 28i (1994). Because AMC 100122 became null and void by operation of law when the filing deadline expired without payment or application for waiver of payment of the maintenance fee, corrective action to revive it is not now possible as a matter of law.

Nor can alleged reliance on incomplete or inaccurate information from BLM relieve Rusher from requirements imposed by law. See 43 C.F.R. § 1810.3. Advice from BLM upon which reliance is predicated so as to support a claim of estoppel must appear as a crucial misstatement in an official decision. See Steven E. Cate, 97 IBLA 27, 32 (1987), and authorities cited therein. No such decision was issued here. In cases such as this, responsibility for satisfying maintenance fee requirements imposed by the Act rests with claim holders, not with BLM, since the 1993 Act provides "that failure to pay the claim maintenance fee * * * shall conclusively constitute a forfeiture of the unpatented mining claim, mill or tunnel site by the claimant and the claim shall be deemed null and void by operation of law." 30 U.S.C. § 28i (1994).

Rusher argues that the 1993 Act is so confusing that it may not reasonably be administered by BLM. In making this argument, he complains that a change in nomenclature for fees charged to miners under prior legislation

led him to believe that, after making a $200 rental fee payment in 1993, he was justified in believing that nothing more was required in 1994, being then unaware of the maintenance fee imposed by the 1993 Act. He contends that one cannot "combine the Appropriations and Omnibus Acts into a coherent pattern," and that BLM's "Decision violated due process of law since the statutes construed together require the doing of acts so vague that person[s] of common intelligence must guess and disagree to their meaning and application." (SOR at 6, 7.)

It is correct, as Rusher contends, that a prior appropriations act, the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (1992 Act), Pub. L. No. 102-381, 106 Stat. 1374, 1378-79, required holders of unpatented mining claims to pay a $100 fee, called a "rental fee," for the 1993 and 1994 assessment years. Regulations implementing the rental fee requirement obligated a claimant to pay, on or before August 31, 1993, a rental fee of $100 for each mining claim located on or before October 5, 1992, for assessment years beginning on September 1, 1992, and September 1, 1993, for a combined rental of $200 for each claim. 43 C.F.R. § 3833.1-5(b) (1993). The record on appeal indicates that Rusher paid the combined rental fee for AMC 100122 on August 26, 1993.

In Kathleen K. Rawlings, 137 IBLA 368, 372 (1997), we held that the 1993 and 1992 Acts, despite their similarities, are separate statutes implemented by separate regulations which must be separately construed. There is therefore no need, as Rusher argues, to construe them together; compliance with the 1992 Act does not, as he suggests, imply compliance with the 1993 Act, nor, as we found in George Jaslowski, 137 IBLA 354, 358 (1997), do the two statutes conflict, because they cover different assessment years.

Finally, we reject his argument that the Decision is defective because it rests on regulations that are invalid because they should have been published earlier than August 30, 1994, since the missed payment was due the very next day. While it is true that 43 C.F.R. § 3833.1-5 (1994) was published the day before payment of the maintenance fee for the 1995 assessment year became effective, see 59 Fed. Reg. 44860 (Aug. 30, 1994), that fact is irrelevant to the question of when notice of the existence of the fee requirement was given to Rusher. The claim maintenance fee payment at issue was required by the 1993 Act itself; payments thereunder by claimants were required to begin not later than August 31, 1994. See 30 U.S.C. § 28f(a) (1994), requiring payment "on or before August 31 of each year, for years 1994 through 1998."

The 1993 Act took effect on August 10, 1993. The requirement that payment be made on August 31, 1994, was not imposed by regulation, but was ordered by the 1993 Act itself, over a year earlier, and could not have been varied by Departmental rulemaking, nor was it; there was sufficient time for Rusher to inform himself of the requirements of the Act in

that time. Cf. William E. Jones v. United States, 121 F.3d 1327, 1330 (9th Cir. 1997), holding that enactment of a claim rental fee payment provision 11 months before the payment deadline gave affected claimants enough time to comply with the statutory requirement. Since the payment at issue here was imposed by an Act of Congress, Rusher was charged with notice of the requirement by operation of a presumption that all persons dealing with the Government have notice of relevant statutes. See Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). When he failed to meet the statutory deadline of August 31, 1994, his claim was forfeited by operation of the 1993 Act, and BLM correctly so found.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the BLM Decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge